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1 L. ALDANA-BERNIER

2 MR. CALLAN: You can answer
3 that, Doctor, if you have a
4 recollection of names.

5 A. One is McDougal [phonetic].

6 Q. Was that in your capacity as an
7 employee at Jamaica Hospital, your
8 private practice, something else?

9 A. Jamaica Hospital.

10 Q. Do you know generally what the
11 claims against you were?

12 A. It's about admitting the
13 patient.

14 Q. An admission under 9.39 of
15 Mental Hygiene Law?

16 A. Yes.

17 Q. Is that matter still pending?

18 A. No, it was cleared.

19 Q. Who represented you in this
20 case?

21 A. The office of Mr. Callan.

22 Q. Did you testify at a deposition
23 in that case?

24 A. Yes.

25 Q. Did you testify at trial in

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2 that case?

3 A. No.

4 Q. You said there were two
5 matters. What is the other matter?

6 A. Ballek.

7 Q. Spell that for me?

8 A. B-A-L-L-E-K.

9 Q. Again, was that in your
10 capacity as an employee of Jamaica
11 Hospital?

12 A. Yes.

13 Q. What were the claims against
14 you in that care?

15 A. I discharged the patient and
16 the patient after 30 days they found out
17 committed suicide.

18 Q. When was that admission that
19 was the subject of that lawsuit?

20 A. 2008.

21 Q. Do you know when in 2008 he
22 ended up committing suicide?

23 A. I don't know. I don't
24 remember.

25 Q. Was that incident in your mind

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2 when you evaluated Mr. Schoolcraft?

3 A. I learned from experience.

4 Q. When you say you learned from
5 experience, the answer is yes, that
6 incident was in your mind when you
7 evaluated Mr. Schoolcraft?

8 A. No, because this case, it
9 happened 2008 but the case was cleared in
10 2013.

11 Q. I'm talking about the lawsuit.
12 I'm talking about the incident where the
13 man committed suicide. Was that part of
14 your thought process when you admitted
15 Mr. Schoolcraft: having had the
16 experience of a patient committing
17 suicide after being released?

18 A. Working in the emergency room,
19 you have to be cautious. You have to
20 make very defensive decisions when you
21 discharge the patient.

22 Q. When you say "cautious," what
23 do you mean?

24 A. You are thinking right, proper,
25 you are either keeping or discharging the

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2 patient.

3 Q. Were you more cautious after
4 that incident you are talking about when
5 this person killed himself in 2008?

6 MR. CALLAN: Objection.

7 A. It's the same.

8 Q. Is that lawsuit still pending?

9 A. No, cleared.

10 Q. Who represented you in that
11 case?

12 A. Mr. Callan.

13 Q. And McDougal, do you know what
14 court that was in?

15 A. Manhattan.

16 Q. State court, federal court?

17 A. I think state court.

18 Q. What about Ballek?

19 A. Federal.

20 MR. CALLAN: Supreme Court,
21 Queens County, in any effort to be
22 cooperative.

23 Q. Have you ever had any hospital
24 privileges revoked or suspended?

25 A. No.

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2 Q. Have your licenses ever been
3 revoked or suspended?

4 A. Never.

5 Q. Have you ever had any sanctions
6 at all with regard to your profession as
7 a physician?

8 A. Never.

9 Q. As part of your education or
10 are you required to do continuing
11 education?

12 A. Yes.

13 Q. As part of your formal
14 education or continuing education, did
15 you ever do any training in danger
16 assessment?

17 A. Training in danger assessment.

18 Q. The danger of a patient
19 injuring themselves or others?

20 A. Risk management you mean?

21 Q. I will rephrase it.

22 Did you have any training with
23 regard to assessing a patient with regard
24 to whether or not they were a danger to
25 themselves or to others?

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2 A. If you are talking about CME
3 with regard to risk management, I think
4 that comes under that title, yes.

5 Q. When it comes under risk
6 management, how does it come under risk
7 management, management of the risk of the
8 patient?

9 A. Yes.

10 Q. Earlier you talked about risk
11 management when you got the lawsuit, they
12 contacted you.

13 A. Yes.

14 Q. Different risk management?

15 A. Yes.

16 Q. So risk management of the
17 patient?

18 A. Of the patient, yes.

19 Q. Where and when did you have
20 this education regarding risk management?

21 A. With Florida CME.

22 Q. What is a CME?

23 A. Medical education credit.

24 Q. You say Florida, is that the
25 location where the course was given?

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2 A. It's required by the State of
3 Florida.

4 Q. Are you licensed in the state
5 of Florida?

6 A. Yes.

7 Q. Where else besides Florida and
8 New York are you licensed?

9 A. West Virginia.

10 Q. Did you ever practice in
11 Florida?

12 A. No.

13 Q. How about West Virginia?

14 A. No.

15 Q. Have you ever lived in Florida?

16 A. No.

17 Q. How about West Virginia?

18 A. No.

19 Q. Any particular reason you have
20 those licenses?

21 A. Just in case.

22 Q. When did you get those
23 licenses?

24 MR. CALLAN: She's ready to go
25 now.

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2 A. I'm not sure but maybe '95.

3 Q. How about West Virginia?

4 A. Very first one, maybe '93.

5 Q. When did you get New York?

6 A. '94.

7 Q. Did you sit for any licensing
8 exams that you did not pass?

9 A. Yes.

10 Q. Where?

11 A. That's my -- that's the --
12 what-do-you-call-it? I'm blocking.

13 MR. CALLAN: He is asking about
14 medical licenses, your MD exams, West
15 Virginia, Florida, New York?

16 A. No.

17 Q. Any other state that you did
18 not pass the MD license?

19 MR. CALLAN: MD.

20 A. That was the Flex. Sorry, yes,
21 it was the Flex.

22 Q. What is the Flex?

23 A. That's our licensing.

24 Q. And you did not pass that?

25 A. No, I pass it now.

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2 Q. When did you not pass it?

3 A. There was one in -- before my
4 '93 licensure.

5 Q. Do you know why Mr. Schoolcraft
6 was admitted to the medical emergency
7 part of the hospital as opposed to the
8 psych part of the hospital when he first
9 came to the hospital?

10 A. He was complaining of abdominal
11 pain.

12 Q. From your review of the
13 hospital record, did you see any
14 treatment for abdominal pain?

15 A. Did I see any treatment?

16 Q. At the hospital given to him
17 for abdominal pain?

18 MR. KRETZ: Objection.

19 Q. In the hospital?

20 A. I have to go back through the
21 notes.

22 Q. I'm also going to ask you about
23 blood pressure so while you are looking
24 at the medical records, I'm going to ask
25 any treatment for blood pressure too

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2 while you're looking the medical records?

3 A. He had a physical exam.

4 Q. When you say "he had a physical
5 exam," how do you know that?

6 A. It's written down here in the
7 MD notes.

8 Q. When the doctor examined him,
9 the doctor made notes about that
10 examination?

11 A. Yes.

12 Q. Did the doctor also take a
13 history?

14 A. Yes.

15 Q. Doctor made notes of that
16 history?

17 A. Yes, it's here.

18 Q. Did the doctor come to any
19 evaluation or opinion or diagnosis?

20 A. History of present illness, he
21 has a review of systems, past medical
22 history, social history, family history.

23 Q. And he puts information in
24 those spots, right?

25 A. Excuse me?

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2 Q. There's information, not just
3 printed form, there is a whole bunch of
4 information in all those categories,
5 correct?

6 A. Yes.

7 Q. So when the doctor evaluated
8 him, the doctor made notes of that
9 evaluation, correct?

10 A. It's here, yes.

11 Q. And the question is: Was this
12 patient ever treated for abdominal, given
13 any treatment for his abdominal pain or
14 high blood pressure?

15 MR. LEE: Objection to the form
16 of the question.

17 MR. RADOMISLI: Objection to the
18 form.

19 MR. SUCKLE: You want to do one
20 at a time: Was he ever treated for
21 abdominal?

22 MR. RADOMISLI: That's not the
23 basis for the objection.

24 MR. SUCKLE: What is the
25 objection?

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2 MR. RADOMISLI: She didn't see
3 him in the medical ED, she didn't
4 review the medical ED chart before
5 coming here.

6 MR. SUCKLE: Your objection is
7 she might not know the answer?

8 MR. RADOMISLI: The objection is
9 you have no right to ask these
10 questions.

11 MR. SUCKLE: She is a treating
12 physician.

13 MR. CALLAN: She's a treating
14 psychiatrist.

15 MR. SUCKLE: When I get there.

16 MR. SHAFFER: Six hours to do
17 the deposition.

18 MR. RADOMISLI: Howard, you know
19 it's not separate.

20 Q. The question is: Was he ever
21 treated for his abdominal pain?

22 MR. CALLAN: Is there a claim
23 for abdominal failure -- failure to
24 treat --

25 MR. SUCKLE: We're working on

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2 it.

3 Q. Was he treated for any
4 abdominal --

5 A. I wasn't in the emergency room.
6 If you want me to, I have to read --

7 Q. You agree sometimes patients
8 come from the medical floor to the psych
9 floor, correct?

10 A. From the medical ER to the
11 psych ER, yes.

12 Q. Sometimes they come with
13 medical problems to the psych ER,
14 correct?

15 A. That's correct.

16 Q. When a patient comes from the
17 medical ER to the psych ER, do you
18 concern yourself at all with the medical
19 issues that the patient may be coming to
20 the psych ER with?

21 A. The patient was medically
22 cleared.

23 Q. But at least it was important
24 for you to know that the patient was
25 medically cleared, right?

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2 A. Right.

3 Q. What was the evaluation of for
4 which he was cleared: abdomen, blood
5 pressure, something else, nothing, you
6 tell me?

7 A. Gastric pain.

8 Q. Was there any treatment that
9 you are aware of he had while in the
10 medical emergency room for that problem?

11 MR. RADOMISLI: Objection.

12 A. I was not in the medical ER.
13 He came to the psych ER the next day.

14 Q. The answer is you don't know;
15 am I correct?

16 MR. LEE: Objection to form.

17 MR. RADOMISLI: Objection to
18 form.

19 Q. You don't know if he was
20 treated for any gastrointestinal
21 problems?

22 MR. RADOMISLI: Objection.

23 MR. SUCKLE: She just said she
24 doesn't know. I'm asking her.

25 MR. RADOMISLI: I'm objecting.

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2 A. There is nothing written down
3 in here. "Whole medications, none;
4 medication administered in emergency
5 department, none; medication prescription
6 provided on discharge, none."

7 Q. No abdominal medication, no
8 blood pressure medication, correct?

9 MR. KRETZ: Objection.

10 A. It's here, none.

11 Q. Did you have any discussions
12 regarding Mr. Schoolcraft with a Bruce
13 Flanz, F-L-A-N-Z?

14 A. No, I don't know.

15 Q. How about conversations
16 regarding Mr. Schoolcraft with David
17 Rosen?

18 A. No, I don't.

19 Q. How about Ollie Peterson, any
20 conversations with Ollie Peterson?

21 A. I don't know.

22 Q. Seth Vivek?

23 A. Seth Vivek?

24 Q. You answered that. Did you
25 have any conversations with Seth Vivek

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2 regarding Adrian Schoolcraft?

3 MR. CALLAN: She said no.

4 A. At what point in time?

5 Q. Any.

6 A. I go to Dr. Dhar.

7 Q. When you say "at what point in
8 time," you gave an indication that you
9 may have had a conversation.

10 Did you ever have a
11 conversation with Dr. Vivek regarding
12 Adrian --

13 A. No, it's Dr. Dhar.

14 Q. You told us about earlier?

15 A. Excuse me?

16 Q. You told us about that
17 conversation earlier, correct?

18 A. Yes.

19 MR. SUCKLE: I have nothing
20 further.

21 MR. SHAFFER: I have a few
22 questions. It's a few.

23 EXAMINATION MR. SHAFFER:

24 Q. Doctor, did anybody from the
25 NYPD, any employee of New York City

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2 Police Department, ever tell you to keep
3 Adrian Schoolcraft at Jamaica Hospital
4 against his will?

5 A. No.

6 Q. At any time prior to Mr.
7 Schoolcraft being released from Jamaica
8 Hospital --

9 MR. SHAFFER: Let me rephrase.

10 Q. Did you believe that Mr.
11 Schoolcraft should have been released
12 from Jamaica Hospital earlier than he
13 actually was?

14 A. Earlier than when I decided he
15 needed admission?

16 Q. No, no. Did --

17 MR. RADOMISLI: Objection to
18 form. That's just improper because
19 you don't know if she knows what
20 happened after she saw him.

21 Q. Do you know that Mr.
22 Schoolcraft was released from the
23 hospital at some point in time?

24 A. Yes.

25 Q. Do you know when Mr.

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2 Schoolcraft was released in the hospital?

3 A. Looking at the note, 2/6/2009.

4 Q. Say again?

5 A. February 6, 2009.

6 Q. You mean November 6th?

7 A. November 6, yes.

8 Q. At any point prior to November
9 6, 2009, did you believe that Mr.
10 Schoolcraft should have been released
11 from the hospital?

12 MR. RADOMISLI: Objection.

13 MR. LEE: Objection.

14 A. Before 11/6?

15 Q. Correct.

16 MR. RADOMISLI: Objection.

17 A. I already admitted him. I
18 wouldn't know. He went upstairs. I
19 would not be able to make a decision to
20 be discharged then.

21 Q. Doctor, what is adjustment
22 disorder?

23 A. Adjustment disorder is -- it's
24 a psychiatric -- it's a diagnosis wherein
25 someone goes under stress and will react

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2 to that stress within a day to one month;
3 react in a sense that will affect his
4 functioning. He could either be
5 depressed, either be agitated, or he
6 could also -- different kinds of
7 reactions could be manifested either
8 through violence or opposite of violence
9 which would be depression or could be
10 manifested with anxiety.

11 MR. SHAFFER: Nothing further.

12 MR. RADOMISLI: I just have a
13 few questions.

14 EXAMINATION BY MR. RADOMISLI:

15 Q. Doctor, residents operate under
16 the supervision of attending physicians,
17 correct?

18 A. That's correct.

19 Q. Decisions by residents must be
20 approved by the attending, correct?

21 A. That's correct.

22 Q. Attendings can overrule
23 decisions made by residents if they
24 believe that the decisions were
25 incorrect; is that right?

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2 A. That's correct.

3 Q. And the attending physician has
4 ultimate responsibility for the patient,
5 correct?

6 A. That's correct.

7 Q. And you can direct nurses to do
8 things for the patient, correct?

9 A. That's correct.

10 Q. You didn't have any issues with
11 what any of the nurses did or did not do
12 for the patient, correct?

13 A. That's correct.

14 MR. SMITH: Objection.

15 Q. You did not have any issues of
16 what the residents did or didn't do for
17 this patient, correct?

18 A. That's correct.

19 Q. You were the attending in
20 charge of the psychiatric ED when you
21 were there, correct?

22 A. That's correct.

23 Q. That means you would have
24 supervised the psychiatric residents in
25 the ED?

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2 A. Psych emergency room, yes.

3 Q. Would that include the
4 psychiatric residents who evaluated the
5 patient when he was in the medical
6 emergency room?

7 A. In 2009, yes, it was us, the
8 doctors in the emergency room.

9 Q. The doctors in the psychiatric
10 emergency room supervised the psychiatric
11 residents who evaluated patients in the
12 medical emergency room?

13 A. Yes.

14 Q. And the resident would not have
15 authority to discharge a patient on his
16 own, correct?

17 A. Correct.

18 Q. That decision would have to be
19 made by the attending, correct?

20 A. Correct.

21 Q. If a patient was going to be
22 discharged at some point from the
23 psychiatric emergency room, an attending
24 psychiatrist would have to make that
25 decision, correct?

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2 A. That's correct.

3 Q. And you were this patient's
4 attending psychiatrist, correct?

5 MR. LEE: In the emergency room?

6 MR. RADOMISLI: Yes.

7 A. In the emergency room, depends
8 what the shift is.

9 Q. During your shift?

10 A. During my shift, yes.

11 MR. RADOMISLI: No more
12 questions.

13 MR. SUCKLE: I have a couple
14 questions.

15 FURTHER EXAMINATION BY MR. SUCKLE:

16 Q. A resident, a resident can't
17 discharge a patient, correct?

18 A. That's correct.

19 Q. And a resident can't admit a
20 patient, correct?

21 A. The attending has the final
22 decision.

23 Q. So when a resident says that a
24 patient should be held, that has to be
25 confirmed by an attending, correct?

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2 A. That's correct, yes.

3 Q. So a resident can't hold a
4 patient on his own or her own order,
5 correct?

6 A. Needs to be discussed with the
7 attending.

8 Q. Am I correct, a patient cannot
9 be held on the order of a resident at
10 Jamaica Hospital in 2009, correct?

11 MR. CALLAN: She just answered
12 the question.

13 A. It has to be discussed with the
14 attending. The attending has to make --
15 they discuss that and once it's
16 discussed, then the attending will make
17 the decision.

18 Q. Attending has to make the order
19 for admission, correct?

20 [Continued on the following page to include
21 signature and jurat.]

22

23

24

25

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2 A. Yes.

3 Q. And for holding a patient,
4 attending has to make that order too,
5 correct?

6 A. That's correct.

7 MR. SUCKLE: Nothing further.

8 MR. SMITH: It's 6:30. We are
9 ending the deposition.

10 MR. SUCKLE: For the record I
11 want to say the attorney for Jamaica
12 Hospital will be retaining the
13 original Exhibit No. 69 which is the
14 hospital chart.

15 [TIME NOTED: 6:31 p.m.]

16

DR. LILIAN ALDANA-BERNIER

17

18

19 Subscribed and sworn to
before me this _____
20 day of _____, 2014.
21

22

23

24

25

Notary Public

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1

2 I N D E X

3

4 WITNESS EXAMINATION BY PAGE

5

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8

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Exhibit 74	Psych 3 Unit Rules	233 / 234
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12

13 Attorneys have retained all exhibits.

14

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1

2 CERTIFICATION

3

4 I, MARGARET SCULLY-AYERS, a Notary
5 Public for and within the State of New
6 York, do hereby certify:

7 That the witness whose testimony as
8 herein set forth, was duly sworn by me;
9 and that the within transcript is a true
10 record of the testimony given by said
11 witness.

12 I further certify that I am not
13 related to any of the parties to this
14 action by blood or marriage, and that I
15 am in no way interested in the outcome of
16 this matter.

17 IN WITNESS WHEREOF, I have hereunto
18 set my hand this 27th day of February,
19 2014.

20

M. Scully-Ayers

21

MARGARET SCULLY-AYERS

22

* * *

23

24

25

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